

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA**

LEAM DRILLING SYSTEMS, INC., ET AL.*	CIVIL ACTION NO. 6:10-1698
VERSUS	* JUDGE DOHERTY
PETROHAWK ENERGY CORP., ET AL.	* MAGISTRATE JUDGE HILL

## REPORT AND RECOMMENDATION

Pending before the Court is the Motion to Dismiss filed by Chubb & Son. [rec. doc. 3]. By this Motion, Chubb & Son seeks dismissal of all claims asserted against it by plaintiffs on grounds that plaintiffs have no cause of action against it because it is a division of Federal Insurance Company and was not a party to the contracts on which the plaintiffs base their Complaint, and, alternatively, because it was not properly served with process and the process was insufficient, pursuant to Rules 12(b)(6), 12(b)(4) and 12(b)(5), respectively. The Motion been referred to the undersigned for report and recommendation. [rec. doc. 9].

For the following reasons, it is recommended that the Motion to Dismiss [rec. doc. 3] be **Granted**. Accordingly, to the extent that Chubb & Son has not already been dismissed as a defendant in this lawsuit, it is recommended that all claims asserted by plaintiffs against Chubb & Son be dismissed without prejudice.

## FACTUAL BACKGROUND AND ANALYSIS

Since the filing of the instant Motion to Dismiss, the plaintiffs have moved to file an Amended Complaint, wherein plaintiffs seek to substitute Federal Insurance Company as a defendant “in place, and instead of, Chubb & Son.” [rec. doc. 13, ¶ 1]. Plaintiffs’ allege that

the Amendment is sought because they have been advised that Federal Insurance Company, not Chubb & Son, is the liability insurer of defendant Petrohawk Energy Corporation. *Id.* at ¶ 2. In so moving, the plaintiffs additionally acknowledge that “[n]o service has been effected on Chubb & Son.” *Id.* at ¶ 3. Moreover, contemporaneous with the filing of their Motion for Leave to file an Amended Complaint, plaintiffs’ counsel contacted Judge Doherty’s chambers to advise that, in light of their filing, they will not file Opposition to Chubb & Son’s Motion to Dismiss.

Under the circumstances, to the extent that Chubb & Son has not already been dismissed as a defendant in this lawsuit, it is recommended that the Motion to Dismiss [rec. doc. 3] be **granted** and that all claims asserted by plaintiffs against Chubb & Son be dismissed without prejudice.

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and Fed.R.Civ.Proc. 72(b), parties aggrieved by this recommendation have fourteen (14) days from service of this report and recommendation to file specific, written objections with the clerk of court. A party may respond to another party’s objections within fourteen (14) days after being served with a copy thereof.

**Failure to file written objections to the proposed factual finding and/or the proposed legal conclusions reflected in this Report and Recommendation within fourteen (14) days following the date of its service, or within the time frame authorized by Fed.R.Civ.P. 6(b), shall bar an aggrieved party from attacking either the factual**

findings or the legal conclusions accepted by the District Court, except upon grounds of plain error. See *Douglas v. United Services Automobile Association*, 79 F.3d 1415 (5<sup>th</sup> Cir. 1996).

Counsel are directed to furnish a courtesy copy of any objections or responses to the District Judge at the time of filing.

Signed this 5<sup>th</sup> day of January, 2011, at Lafayette, Louisiana.

  
C. MICHAEL HILL  
UNITED STATES MAGISTRATE JUDGE